DOCUMENT RESUME

ED 345 463 EC 301 224

TITLE	Placement of School Children with Acquired Immune Deficiency Syndrome (AIDS).
INSTITUTION	Office for Civil Rights (ED), Washington, DC.
REPORT NO	ED/OCR91-11
PUB DATE	Jul 91
NOTE	23p.
PUB TYPE	Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Acquired Immune Deficiency Syndrome; *Civil Rights; Compliance (Legal); Educational Legislation; Elementary Secondary Education; *Federal Legislation; Handicap Discrimination; Handicap Identification; Public Policy; School Responsibility; *Student Placement; Student Rights
IDENTIFIERS	*Rehabilitation Act 1973 (Section 504)

ABSTRACT

This pamphlet describes the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, with respect to elementary and secondary school policies involving the placement of children with Acquired Immune Deficiency Syndrome (AIDS). It explains the policy of the U.S. Department of Education's Office for Civil Rights concerning how children with AIDS should be served and their rights under the law. Following an explanation of how AIDS is acquired and transmitted, the Section 504 definition of a handicapped person is presented and related to persons with AIDS. Qualification of children with AIDS as handicapped persons based on their age is noted. The pamphlet then discusses the placement of most children with AIDS in the regular classroom without restrictions and the evaluation process required if it is believed that a child with AIDS needs alternative placement or services. The child's right to procedural safeguards and confidentiality are noted. The pamphlet concludes with a list of the addresses and telephone numbers of the 10 regional offices of the Office for Civil Rights. (JDD)

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(ACQUIRED IMMUNE DEFICIENCY SYNDROME)

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PLACEMENT OF SCHOOL CHILDREN WITH ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

U.S. Department of Education
Office for Civil Rights
Washington, D.C. 20202-1101

July 1991

INTRODUCTION

This pamphlet describes the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, with respect to elementary and secondary school policies involving the placement of children with Acquired Immune Deficiency Syndrome or AIDS.

On April 18, 1991, the President announced ***AMERICA 2000****: An Education Strategy. It is a bold, complex, and long-range plan designed to move every community toward the six national education goals that the President and the Governors adopted in 1990. Consistent with* ***AMERICA 2000****, the Office for Civil Rights has instituted a National Enforcement Strategy designed to help protect equal educational opportunity for all students. Providing educational services to students with Acquired Immune Deficiency Syndrome (AIDS) is consistent with* ***AMERICA 2000's*** *goals of helping to fight the modern plagues that touch our youth. The goals enumerated in* ***AMERICA 2000****, and the National Enforcement Strategy, will help*

in our nationwide crusade -- community by community, school by school -- to make America all that it should be.

The information in the pamphlet explains to school officials and parents how children with AIDS should be served, and their rights under the law. It reflects the policy of the Office for Civil Rights (OCR), U.S. Department of Education. OCR enforces Section 504 in programs and activities that receive federal financial assistance, such as public elementary and secondary school districts.

WHAT IS AIDS

AIDS is caused by infection of the individual with a human immunodeficiency virus (HIV) that alters a person's immune system and damages his/her ability to fight off other diseases. AIDS is primarily spread by sexual contact and the sharing of contaminated needles and syringes among users of illegal intravenous drugs. Children generally acquire the disease in one of two other ways:

- *the virus can be passed on from infected mothers during pregnancy, at birth, or shortly after birth; and*

- *in a small number of cases, the virus has been spread through blood products (clotting factors) and blood transfusions.*

However, in recent years, knowledge about the disease has increased. Many precautions are now taken in screening blood donations. As a result, the chance that anyone will get AIDS through blood products or blood transfusions is extremely small. Today, the most common way that children contract AIDS is in utero as the offspring of mothers infected with the AIDS virus. Health officials stress that the disease is not transmitted through casual contact. The Surgeon General of the United States has declared that "casual, social contact between children and persons infected with the AIDS virus is not dangerous." No cases of AIDS have been identified in which students were infected in a school setting.

OCR POLICY ON THE SCHOOL PLACEMENT OF CHILDREN WITH AIDS

Children with AIDS are Handicapped Persons

Section 504 prohibits discrimination against persons with handicaps in federally assisted programs such as elementary and secondary schools. It provides that:

> *No otherwise qualified individual with handicaps in the United States ... shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.*

The law of which Section 504 is a part defines a handicapped person as one who has a physical or mental ***impairment that substantially limits one or more major life activities, has***

a record of such an impairment, or is perceived as having such an impairment. *For example, while some individuals with AIDS are substantially impaired physically, virtually all individuals with AIDS are regarded as having an impairment.*

Section 504 protects individuals infected by AIDS on the basis of any actual, past or perceived effect of HIV infection that substantially limits any major life activity so long as the individual is otherwise qualified. Since AIDS damages many of the body's systems, such as the hemic (blood), lymphatic, reproductive, and other systems, persons with AIDS are often substantially limited in a major life activity due to physical impairment.

Persons with AIDS are also substantially limited in a major life activity due to the reaction of others to their ***perceived*** *contagiousness. The fear of AIDS includes a perception that a person with the disease is substantially impaired in his/her ability to interact with others, for example, to attend school. Persons, such as those with AIDS, who are "regarded" as impaired, are just as "handicapped" under the law as those*

who possess the physical limitations that arise from actual impairment. Discrimination based solely on the fear of contagion is discrimination based on handicap when the impairment has that effect on others.

Children with AIDS are Qualified Handicapped Persons

Section 504 defines a ***qualified*** *handicapped person, with regard to elementary and secondary school programs, as:*

- *a handicapped person of an age during which nonhandicapped persons are provided education; or*

- *a handicapped person of any age during which it is mandatory under state law to provide services to handicapped persons or to whom a state is required to provide a free appropriate public education.*

Thus, in the case of elementary and secondary school children, "qualified" is defined in terms of age. If a child

handicapped by AIDS is of school age, he or she is considered a qualified handicapped person.

Where Should Children with AIDS be Educated

Most children with AIDS can attend school in the regular classroom without restrictions. There has been no medical evidence disclosed to show that AIDS is contagious in the school setting. According to the latest medical information, there have been no reported cases of the transmission of the AIDS virus in schools. The Surgeon General and other health authorities, such as the Centers for Disease Control and the American Medical Association, have reinforced this position by stating that there is no significant risk of contracting AIDS in the classroom.

If a parent or school official believes that a child with AIDS needs related services or placement outside the regular classroom, Section 504 requires an evaluation and placement process to determine the appropriate educational setting for a child with AIDS. ***However, a full educational evaluation is not required when neither the school***

officials nor parents believe that a child is in need of special education or related services.

If an evaluation is necessary, Section 504 requires the following procedures. Placement determinations are to be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options available. The group may include the child's physician, public health personnel, the child's parent or guardian, and personnel familiar with all possible educational services. The group would draw upon information from a variety of sources, such as tests, teacher recommendations, and assessments of the child's physical condition.

In making placement decisions, the information needed by the placement team varies with the handicapping condition. In the case of children with AIDS, the placement group must have the benefit of the latest reliable public health information with regard to the risks that the disease entails. This information would be considered along with information on the child's medical condition, behavior, and so forth. In

each case, risks and benefits to both the infected child and others in the setting should be weighed.

A Child with AIDS Has a Right to Section 504 Procedural Safeguards

Section 504 requires elementary and secondary school districts to provide a free appropriate public education for handicapped students that includes evaluation and placement procedures, and a system of procedural safeguards that includes notice to parents or guardians of their rights under the law, an opportunity for the child's parents or guardians to examine relevant records, an impartial hearing with an opportunity for participation by the parents or guardians and representation by counsel, and a review procedure.

A Child with AIDS Has a Right to Confidentiality

Although Section 504 does not contain a specific provision regarding confidentiality, it does state that recipients may not "provide different or separate aid, benefits or services to handicapped persons or to any class of handicapped persons...."

Under Section 504, singling out children handicapped with AIDS for treatment that differs from that provided to nonhandicapped children or children with other handicaps with respect to confidentiality would constitute different treatment on the basis of handicap, and would be a violation of the regulation.

This provision would not affect state and local public health rules regarding the duty of school districts to report specified diseases to public health departments. However, when reporting any cases of AIDS to public health authorities, school districts should convey such information in a manner that respects the privacy of the individual and the confidential nature of the information, in the same way that information about other diseases is treated.

The Family Educational Rights and Privacy Act and other federal laws provide protection against unwarranted disclosure of school records. If school districts have concerns or need guidance on confidentiality requirements, they can contact the Office of Special Education and Rehabilitative Services (OSERS) and the Family Policy and Regulatory Staff in the Department of Education.

HOW TO OBTAIN FURTHER ASSISTANCE/INFORMATION

OCR enforces Section 504 and interprets the Section 504 regulations. OSERS administers the Individuals with Disabilities Education Act (IDEA) and interprets the act's regulations. Because Section 504 and IDEA are different federal statutes, they may have different compliance standards. For further information regarding the requirements of IDEA, contact:

Office of Special Education Programs
Office of Special Education
and Rehabilitative Services
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2570

Anyone wishing additional information regarding the rights of school children with AIDS and the responsibility of school districts under Section 504 may contact the OCR regional office serving his or her state or territory. Questions concerning OCR's policies on AIDS or other civil rights topics should be directed to the appropriate regional office. The addresses and telephone numbers of the regional offices and other sources of information are listed below.

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Office for Civil Rights, Region I
U.S. Department of Education
J.W. McCormack Post Office and Courthouse, Room 222, 01-0061
Boston, MA 02109-4557
(617) 223-9662; TDD (6l7) 223-9695

Region II

New Jersey, New York, Puerto Rico, Virgin Islands

Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza, 33rd Floor
Room 33-130, 02-1010
New York, NY 10278-0082
(212) 264-4633; TDD (212) 264-9464

Region III

Delaware, District of Columbia,
Maryland, Pennsylvania, Virginia,
West Virginia

Office for Civil Rights, Region III
U.S. Department of Education
3535 Market Street
Room 6300, 03-2010
Philadelphia, PA 19104-3326
(215) 596-6772; TDD (215) 596-6794

Region IV

Alabama, Florida, Georgia,
North Carolina, South Carolina,
Tennessee

Office for Civil Rights, Region IV
U.S. Department of Education
Post Office Box 2048, 04-3010
Atlanta, GA 30301-2048
(404) 331-2954; TDD (404) 331-7816

Region V

Illinois, Indiana, Minnesota, Michigan,
Ohio, Wisconsin

Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street
Room 700C, 05-4010
Chicago, IL 60605-1202
(312) 886-3456; TDD (312) 353-2541

Region VI

Arkansas, Louisiana, Mississippi,
Oklahoma, Texas

Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building
Suite 2260, 06-5010
Dallas, TX 75202-9998
(214) 767-3959; TDD (214) 767-3639

Region VII

Iowa, Kansas, Kentucky, Missouri, Nebraska

Office for Civil Rights, Region VII
U.S. Department of Education
10220 North Executive Hill Boulevard
8th Floor, 07-6010
Kansas City, MO 64153-1367
(816) 891-8026; TDD (816) 374-6461

Region VIII

Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, Wyoming

Office for Civil Rights, Region VIII
U.S. Department of Education
Federal Building, Suite 310, 08-7010
1244 Speer Boulevard
Denver, CO 80204-3582
(303) 844-5695; TDD (303) 844-3417

Region IX

California

Office for Civil Rights, Region IX
U.S. Department of Education
Old Federal Building
50 United Nations Plaza
Room 239, 09-8010
San Francisco, CA 94102-4102
(415) 556-7000; TDD (415) 556-6806

Region X

Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territory of the Pacific Islands

Office for Civil Rights, Region X
U.S. Department of Education
915 Second Avenue
Room 3310, 10-9010
Seattle, WA 98174-1099
(206) 553-6811; TDD (206) 553-4542

FOR GUIDANCE ON CONFIDENTIALITY REQUIREMENTS CONTACT:

Office of Special Education and Rehabilitative Services
U.S. Department of Education
Mary E. Switzer Building, Room 3006
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2500
(202) 732-1025

Family Policy and Regulatory Staff
U.S. Department of Education
Mary E. Switzer Building
Room 1087
330 "C" Street, S.W.
Washington, D.C. 20202
(202) 401-2057

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